

IN THE MATTER OF	:	
THE CONTINENTAL CHEMICAL CO.	:	RESTORATION
SITE	:	
PROGRAM INTEREST NO. #026983	:	ADMINISTRATIVE CONSENT
AND	:	
PHILIP D. TURITS	:	ORDER

The Department enters this Restoration Administrative Consent Order pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (Department) by N.J.S.A. 13:1D-1 through -19, and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 23.24, and duly delegated to the Assistant Commissioner, Natural and Historic Resources pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The site that is the subject of this Restoration Administrative Consent Order is presently owned by Christos Giatros, is located at 270 Clifton Boulevard and is designated as Block [30.1], Lot [15] on the tax maps of the City of Clifton, Passaic County, New Jersey (Site).
2. Continental Chemical Co. incorporated in the State of New Jersey with its principal offices at 50 Broad Street, Suite 808, New York, NY has agreed to enter into this Restoration Administrative Consent Order.
3. Philip D. Turits, President of Continental Chemical Co. and former property owner of the Site has agreed to enter into this Restoration Administrative Consent Order.
4. Continental Chemical Co. and Philip D. Turits have completed the cleanup and removal of discharges at the Site pursuant to the Industrial Site Recovery rules.
5. Continental Chemical Co. and Philip D. Turits have conducted a baseline ecological evaluation at the site and reported the results of that evaluation to the Department in a report approved by the Department by letter dated May 8, 2003.

Based on the baseline ecological evaluation, Continental Chemical Co. and Philip D. Turits concluded that an ecological risk assessment was not necessary at the Site because all criteria in N.J.A.C. 7:26E-3.11(a)4 of the baseline ecological evaluation were not present.

6. Continental Chemical Co. and Philip D. Turits has completed a remedial investigation of contaminated ground water at the Site and reported the results of that assessment to the Department in a report approved by the Department by letter dated May 8, 2003.

7. Continental Chemical Co. and Philip D. Turits has reported to the Department that the following contaminants of ecological concern have been discharged at the site:

Benzo(a) anthracene
Benzo(a) pyrene
Benzo(b) fluoranthene
Benzo(k) fuoranthene
Chrysene
Dibenzo (a,h) anthracene

Indeno (1,2,3-cd) pyrene
Total Petroleum Hydrocarbons
Surfactants, including but not limited to:
anionic surfactants, nonionic surfactants,
and Methylene Blue Activated Substances

8. As the trustee of all of the natural resources within the jurisdiction of New Jersey for the benefit of its citizens, the Department of Environmental Protection alleges that the discharge of hazardous substances at the site has injured and continues to injure natural resources and the economic and ecologic services that they provide. These injured natural resources include: ground water, and soil.

9. By entering into this Restoration Administrative Consent Order, Continental Chemical Co. and Philip D. Turits neither admits nor denies any of the findings of the Department. This Restoration Administrative Consent Order shall not constitute, or be interpreted or used as an admission of fault, liability, law or fact, nor shall it be admissible in any proceeding as such, except only to the limited extent necessary to enforce the provisions of this Restoration Administrative Consent Order.

ORDER

I. Payment of Natural Resource Damages

10. Within thirty (30) calendar days after the effective date of this Restoration Administrative Consent Order, Continental Chemical Co. and Philip D. Turits agrees to pay to the Department the sum of \$ 11,411.73 in settlement of the Department of Environmental Protection's claim for natural resource damages resulting from discharges that occurred at the Site prior to the date of this Restoration Administrative Consent Order. Continental Chemical Co. and Philip D.

Turits agrees to make this payment by a cashier's or certified check payable to the "Treasurer State of New Jersey" and submit it with NJDEP Form 062A to:

John Sacco, Director
Office of Natural Resource Restoration
Natural and Historic Resources Program
Department of Environmental Protection
P.O. Box 404
Trenton, New Jersey 08625-0404

II. Release

11. The following definitions apply for the purpose of this Restoration Administrative Consent Order:

a) "Natural resource damages" as used in this Restoration Administrative Consent Order includes any and all claims, arising from a discharge at the Site of the hazardous substances that are listed in Paragraph 6, above, that occurred at the Site prior to the date of this Restoration Administrative Consent Order, for lost use of, injury to or destruction of natural resources including but not limited to claims for assessments, penalties, attorney's fees, consultant's or expert fees, interest, or any other expenses or compensation, injunctive relief, punitive damages and administrative remedies, recoverable as natural resource damages under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9607 et seq., the Oil Pollution Act, 33 U.S.C. §§ 2701 et seq., the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 23.24, or any other state or federal common law, statute, or regulation; provided, however, that natural resource damages shall not include either: (i) compliance, during the cleanup of such discharge, with any statutory or regulatory requirement that is not within this definition of natural resource damages, for example, without limitation, the mitigation of freshwater wetlands as required by N.J.A.C. 7:7A, or (ii) the restoration or other compensation for injury to natural resources caused after the date of this Restoration Administrative Consent Order by implementation of any remedial action, including a compensatory restoration remedial action, for the Site.

b) "Natural resources" include all land, fish, shellfish, wildlife, biota, air, waters and other such resources owned, managed, held in trust or otherwise controlled by the State.

12. Within 30 calendar days after the Department's receipt of the full payment identified in Paragraph 9, above, the New Jersey Department of Environmental Protection agrees to issue a Release to Continental Chemical Co. and Philip D. Turits, consistent with this Restoration Administrative Consent Order, that fully and forever releases, covenants not to sue, or otherwise take administrative action against Continental Chemical Co. and Philip D. Turits and its officers, directors, employees, and agents (collectively Releasees), for any and all of the Department's claims and causes of actions for natural resource damages as a result of the known discharges at the Site prior to the date of this Restoration Administrative Consent Order. The release shall not extend to any person that has liability for natural resource damages other than that person's relationship to Continental Chemical Co. and Philip D. Turits as described in this paragraph.

III. Contribution Protection

13. It is the intent of the Department and Continental Chemical Co. and Philip D. Turits that this Restoration Administrative Consent Order constitutes an administratively approved settlement within the meaning of 42 U.S.C. § 9613(f)2 for the purpose of providing protection from contribution actions or claims for natural resource damages as a result of a discharge at the Site.

14. It is the further intent of the Department and Continental Chemical Co. and Philip D. Turits that by entering into this Restoration Administrative Consent Order, the Releasees shall be protected to the greatest extent possible from any contribution claim a third party may assert to the extent the claim arises from any judgment entered in favor of the Department in any civil or administrative action the Department brings to recover for damages or injuries to natural resources at the Site. The Department further agrees that the payment described in Paragraph 9, above, constitute the Releasees' full and fair share of any claim or cause of action the Department has for natural resource damages. The Department further agrees that the release in this Restoration Administrative Consent Order does not discharge any other potentially liable persons, but such restoration does reduce the potential liability of the others by the amount of the payments. Further, the Department agrees that it will not oppose any motion or application by the Releasees in any subsequent action in which the Releasees seek the contribution protection that this Restoration Administrative Consent Order is intended to provide. The Department agrees that it will require, in any future settlement that it reaches with any other person or entity regarding natural resource damages as a result of discharges at the Site, a provision that such person or entity will not seek and thereby waives all rights of contribution from the Releasees for the natural resource damage liability settled thereunder.

15. Within 10 calendar days after the effective date of this Restoration Administrative Consent Order, Continental Chemical Co. and Philip D. Turits agrees to publish legal notices in three newspapers of general circulation in the area of the Site for a period of not less than three days and the Department agrees to arrange for the publication of a notice in the New Jersey Register, each giving notice to the public that the New Jersey Department of Environmental Protection and Continental Chemical Co. and Philip D. Turits have entered into this Restoration Administrative Consent Order, that a copy of this Restoration Administrative Consent Order is available for inspection via the internet at the main branch of the Passaic County Library, the main office of the Department in Trenton, New Jersey, and on the Department's Internet site at www.nj.gov/dep/onrr/settlements and that objections to, or comments on, the entry of this Restoration Administrative Consent Order should be submitted to the Department within 30 calendar days after the date of the first publication in any of these notices.

16. The Department reserves the right to withdraw its execution of this Restoration Administrative Consent Order if the comments or objections regarding the Restoration Administrative Consent Order disclose facts or considerations that indicate to the Department, in its sole discretion, that the Restoration Administrative Consent Order is inappropriate, improper, or inadequate; provided, however, that the Department will, if it deems appropriate, exercise its right to withdraw its execution of this Restoration Administrative Consent Order no later than 45 calendar days after the end of the comment period described in the preceding paragraph. If the Department withdraws its execution of this Administrative Consent Order it will return the payment Continental Co. and Philip D. Turits paid pursuant to paragraph 9, above. Continental Chemical Co. and Philip D. Turits consents to the entry of this Restoration Administrative Consent Order without further notice.

IV. General Provisions

17. If Continental Chemical Co. and Philip D. Turits fails to make the payment as agreed to in Paragraph 9, above, the Department reserves it right to terminate this Restoration Administrative Consent Order, withdraw its offer to settle the natural resource damages in this case, and pursue other enforcement actions.

18. Nothing in this Restoration Administrative Consent Order, including the Department's issuance of a covenant not to sue as described in Paragraph 11, above, shall impact Continental Chemical Co. and Philip D. Turits's obligation to complete the remediation of all discharges at the Site. See paragraph 3, above. The Department expressly reserves the right to require complete remediation of all discharges at the Site.

19. Continental Chemical Co. and Philip D. Turits agrees to comply with this Restoration Administrative Consent Order, which shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

20. No modification or waiver of this Restoration Administrative Consent Order shall be valid except by written amendment to this Restoration Administrative Consent Order duly executed by Continental Chemical Co. and Philip D. Turits and the Department.

21. Continental Chemical Co. and Philip D. Turits waives its rights to an administrative hearing concerning the entry of this Restoration Administrative Consent Order.

22. This Restoration Administrative Consent Order shall be governed and interpreted under the laws of the State of New Jersey.

23. This Restoration Administrative Consent Order shall be binding, jointly and severally, on each party, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any party or the site shall alter any party's responsibilities under this Restoration Administrative Consent Order.

24. This Restoration Administrative Consent Order shall be effective upon the execution of this Restoration Administrative Consent Order by the Department and Continental Chemical Co. and Philip D. Turits.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Date: _____ By: _____
John S. Watson, Jr.
Assistant Commissioner, Natural and Historic Resources

Continental Chemical Co.

Date: _____ By: _____
Signature

Print Full Name Signed Above

Title

Philip D. Turits

Date: _____ By: _____
Signature

Title